3

FEB 21

Supreme Court of the United States

OCTOBER TERM, 1945

No. 814

MANHATTAN RAILWAY COMPANY and CHARLES FRANKLIN,

Petitioners,

v.

THE CITY OF NEW YORK, THEODORE S. WATSON, and others, as a Committee for 7% Guaranteed Stock of Manhattan Railway Company; HAROLD PALMER, and others, as a Committee for 7% Guaranteed Stock of Manhattan Railway Company, and CHARLES FRANKLIN, and others, as Committee for Modified Stock of Manhattan Railway Company, and CHEMICAL BANK & TRUST COMPANY,

Respondents.

PETITIONERS' REPLY BRIEF

JOHN B. DOYLE,
Counsel for Manhattan Railway Company and Charles Franklin, Petitioners.

FREDERIC A. JOHNSON,
of Counsel.

SUBJECT INDEX

PAGE

I. Misleading statements in opposing brief 1

II. The true application of Palmer v. Watson (122 F. 2d 589 [C. C. A. 2nd] to petitioners' position) .. 3

III. The City of New York as the sole objector, is without standing to oppose petition for certiorari 4

TABLE OF CASES

Franklin v. City of New York, 144 F. 2nd 571; cert. den. 324 U. S. 84 3

Palmer v. Watson, 122 F. (2d) 598, 600 3

Supreme Court of the United States

OCTOBER TERM, 1945

No. 814

MANHATTAN RAILWAY COMPANY and CHARLES FRANKLIN,

Petitioners,

v.

THE CITY OF NEW YORK, THEODORE S. WATSON, and others, as a Committee for 7% Guaranteed Stock of Manhattan Railway Company; HAROLD PALMER, and others, as a Committee for 7% Guaranteed Stock of Manhattan Railway Company, and CHARLES FRANKLIN, and others, as Committee for Modified Stock of Manhattan Railway Company, and CHEMICAL BANK & TRUST COMPANY,

Respondents.

PETITIONERS' REPLY BRIEF

I

Misleading statements in opposing brief.

The statements (pp. 2, 11), that petitioner Franklin received $92,500 are misleading and refuted by the record. The fact is, that he has had no compensation whatever for the services in question over the eight year period. The transcript of record before this Court shows that counsel for the City of New York stipulated the correctness of the following fact:

> "that allowances heretofore made do not meet petitioner's out-of-pocket office overhead expense incurred in the performance of the labors, leaving nothing for the work" (fol. 2).

The agreed statement of fact above quoted is in accord with the averments of the petition (fols. 38, 264-5). Total

allowance to petitioner under the Plan was $35,000, and not $92,500. This fact also appears in the agreed statement of the case (fol. 7).

These averments of the petition (fols. 38, 264-5) have never been questioned or denied. They were established by exhibit and testimony in the former abortive proceeding, the District Court having declared therein that said Exhibit 124 "was in no way impugned" (Certiorari rec., fols. 7294, 1940, 324 U. S. 847).

Petitioner Franklin's disbursements in the rendition of the services totaled $76,959.46, and were never repaid. Actually, petitioner not only has had no compensation for his labors in question, but he has sustained a deficit in excess of $6,000.

The payment of $22,500 (p. 2) was not made to petitioner Franklin, but to junior attorneys engaged on Manhattan Company corporate work, as to which the District Court declared that payment was ordered because such work properly belonged to the Receiver (Cert. rec., fols. 108-9, 105).

Contrary to the statement (p. 3), that allowance was made of $70,000 to Mr. Franklin and his co-counsel for services to the 5% Committee of which he received $35,000, the fact is that he did not receive such amount, and further the said Committee's petition by its terms expressly excluded Mr. Franklin's services in question.* Moreover,

---

* Paragraph Second of the Modified Stock Petition alleged as follows (R. fols. 4609-10):

> "SECOND: This petition is *not* intended to cover the services of Manhattan's general counsel and solicitor in the receivership and related proceedings; such service under the provisions of subdivision (d), paragraph (8) of Article Six of the Plan of Unification will be the subject of a separate petition to be filed on or before May 15, 1940, in pursuance of the order of this court dated April 16, 1940."

Further, paragraph Seventh, provided as follows (R. fol. 4624):

> "Compensation to counsel. *No sums are asked in this petition as compensation to counsel for Manhattan.*"

the order of the Court granting the allowance to Messrs. Hodges, Reavis, Pantaleoni & Downey, the solicitors for said Committee who had made the application, specifically excluded from its scope: "the fees of counsel for Manhattan Railway Company (that is, petitioner Franklin) in the receivership and related proceedings, being the subject of a different petition" (Cert. rec., fol. 4802).

II

The true application of *Palmer* v. *Watson* (122 Fed. 2nd 589 [C. C. A. 2nd] to petitioners' position.

Franklin v. *City of New York* (144 Fed. 2nd 571; cert. den. 324 U. S. 847), is quoted at page 8 of the opposing brief as authority that the obligation of Manhattan Stockholders to petitioner Franklin cannot be enforced against them. The quotation rests upon the statement of said Court in *Palmer* v. *Watson* (122 Fed. 2nd 598 [C. C. A. 2nd] 600).

Palmer v. *Watson* decided what the Palmer Committee and counsel could take under Article Six, paragraph (6) of the Unification Plan against all Manhattan Guaranteed Stockholders. They could only take what they were awarded by the District Court as the value of their services. But the opinion of the Circuit Court of Appeals concluded with this express reservation (p. 600):

> "We do not in affirming this order attempt to decide what may be the obligations of its actual depositors to the Committee."

It will not be disputed that thereafter, upon the petition of the solicitor for the Palmer Committee, the District Court enforced the contract for legal compensation against the depositing stockholders with said Committee and directed payment out of the reserves with Chemical Bank

& Trust Company mentioned in the present petition (fol. 11). Now we have the precise parallel. Manhattan stockholders through their company obligated themselves to pay petitioner Franklin a minimum of $250,000 out of the funds which they might receive "from or in respect to claims and rights of the Interborough Rapid Transit Company or its Receiver or the City of New York" (fols. 101, 103). It is $235,000 of that agreed compensation, plus $75,000 unpaid balance of salary due as general counsel that the petition herein asks to be paid Mr. Franklin from the fund recovered on the claims of Manhattan stockholders as creditors against Interborough Rapid Transit Company now reserved for them (fol. 19).

III

The City of New York, as the sole objector, is without standing to oppose petition for certiorari.

No relief is asked against the City of New York. It has really no interest in the present proceeding, which is directed not against its treasury but against reserve funds *in custodia legis,* out of which not one penny has been contributed for the services involved in this proceeding. The City comes forward as a self appointed guardian, whereas the petition and papers before the courts below show that the protective committees for Manhattan stockholders filed no objection, but approved of payment, even the Watson 7% Committee for Manhattan Guaranteed stock, in spite of the answer of *res adjudicata* interposed by its solicitors (fols. 50, 51, 155, 198, 199, 200, 224, 225), and as recognized by the District Court (fol. 296).

CONCLUSIONS

The opposing brief is an evasion of the petition and supporting brief.

The petition for writ of certiorari should be granted.

Dated, New York, February 18, 1946.

Respectfully submitted,

JOHN B. DOYLE,
Counsel for Manhattan Railway Company and Charles Franklin, Petitioners.

FREDERIC A. JOHNSON,
of Counsel.